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UNCLAS KATHMANDU 000145

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SUBJECT: NEPAL: ARMY TO COURT-MARTIAL TWO IN HUMAN RIGHTS
CASE; HOME MINISTRY DEFIES COURT ORDER TO RELEASE DETAINEES

REF: KATHMANDU 0087

RNA TO COURT-MARTIAL TWO IN SHOOTING INCIDENT

1. (U) On January 25 Defense Secretary Madan Prasad Aryal announced in a speech at the Reporters Club that the Royal Nepal Army (RNA) will court-martial soldiers involved in the November 27 killings of five young men and boys in Nuwakot District (Reftel). (Note: The RNA maintains the five were mistaken for Maoists as they were returning late from a funeral in a rural area and failed to identify themselves to sentries. End note.) On January 27 a member of the RNA human rights cell, which had investigated the incident and found the five were innocent of Maoist connections, confirmed that a captain and one soldier will stand trial in the incident. In addition, the Home Ministry has decided to provide approximately USD 1300 each to the families of a 14-year-old boy and a 23-year-old man killed in the crossfire between the RNA and Maoists in Myagdi District in December. A final determination of whether to investigate further allegations of custodial rape committed by officers in Nepalganj, Banke District (Reftel) is still before the Chief of Army Staff.

HOME MINISTRY DEFIES SUPREME COURT ORDERS ON DETAINEES

2. (U) The Home Ministry has so far failed to respond to Supreme Court orders that it release 12 detainees, arrested as suspected Maoists and reportedly being held in Kathmandu jails, because of insufficient evidence. On January 5 the Supreme Court ordered the release of Dambar Karki, Haridwar Kunwar, Shantiram Bhattarai, Narayan Adhikari, and 16-year-old Chaturman Gurung, all of whom were arrested under the Terrorist and Destructive Activities Act (TADA). (Note: The TADA allows for suspects to be held without charge for 60 days and in preventive detention for up to 90 days. In practice, many detainees have been held without charge for much longer periods. End note.) The Government of Nepal (GON) maintains the five are not in custody, a point disputed by family and lawyers, who claim to have seen them in jail. On January 23 the Supreme Court ordered the Home Ministry, police headquarters, and RNA to show cause why another seven detainees, also believed to be held in Kathmandu jails, have not been released. No reply has been received to this order.

3. (U) The local press reported that on January 24 plainclothes security personnel immediately re-arrested another detainee, Janak Prasad Adhikari, following his release from the district jail in Nuwakot by order of the Supreme Court. The Chief District Officer (CDO) in Nuwakot told us January 27 that Adhikari had not been re-arrested by district authorities; if others outside the district had arrested Adhikari, the CDO knew nothing about it, he asserted.

COMMENT

4. (SBU) The RNA has been stung recently by charges that it has failed to hold its soldiers accountable for alleged human rights abuses (Reftel). Most accounts of the Nuwakot incident, however, depict it as a tragic mistake that occurred as the unidentified group of young men and boys advanced on the RNA perimeter at night. This incident marks the first occasion RNA soldiers have been ordered to stand court-martial since the Army's deployment against the insurgents more than one year ago. Since the declaration of the state of emergency in November 2001, the GON has arrested an unknown number of suspects under special anti-terrorism legislation. Few of these suspects have been formally charged; even fewer have been tried. The legal, judicial and penal systems are clearly overwhelmed. Ignoring Supreme Court orders to produce detainees, as the Home Ministry seems to have elected to do, will do little to ameliorate the situation.

